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Liability of Non-Managing Shareholders between Intentional Fault and Interference

Limits of Compensatory Liability Extension and Strictness of the Burden of Proof in Order no. 1358/2026 of the Italian Supreme Court of Cassation, Civil Division

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Current Legal Framework as of 11 November 2026: Supreme Court case law consolidates the scope of application of Article 2476, paragraph 8, of the Italian Civil Code, requiring strict proof of willful misconduct (intent) and specific managerial interference in order to establish the joint and several liability of a non-managing shareholder.

ABSTRACT

This contribution examines the regime governing the **liability of non-managing shareholders** in Italian limited liability companies (*società a responsabilità limitata*, S.r.l.) in light of **Order no. 1358/2026 of the Italian Supreme Court of Cassation, Civil Division**. The analysis investigates the constitutive requirements of **complicity in managerial wrongdoing** set forth under Article 2476, paragraph 8, of the Italian Civil Code, focusing on the substantive threshold of managerial interference and the mandatory qualification of the mental element as **willful misconduct (intent)**, with the consequent exclusion of any liability based on mere negligence or lack of supervision. Finally, the study explores the procedural implications concerning the allocation of the **burden of proof** and defense strategies in corporate litigation.

Key Takeaways

- **Nature of managerial interference:** Joint and several liability presupposes that the non-managing shareholder actively participated in deciding or authorizing specific harmful acts falling within the institutional competence of the directors.
- **Indispensable requirement of willful misconduct:** The statutory adverb "intentionally" (*intenzionalmente*) demands full awareness and deliberate volition of the harmful act, strictly ruling out liability founded on negligence, carelessness, or failure to supervise.
- **Professional fees lacking legal justification:** Order no. 1358/2026 identifies concurrent managerial misconduct (*mala gestio*) where a shareholder collects unjustified professional fees during a period in which the company is operationally dormant.
- **Allocation of the burden of proof:** The claimant bears the burden of pleading and proving causal interference and willful intent, whereas the exact mathematical quantification of damages may take place during the evidentiary stage of the proceedings.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Civil Law & Corporate Law

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Order of 21 January 2026, no. 1358 — Upholds the joint and several liability

Legal Principle / Editorial Headnote

In the context of Italian limited liability companies, the joint and several liability of a non-managing shareholder pursuant to Article 2476, paragraph 8, of the Italian Civil Code presupposes that such shareholder intentionally concurred in deciding or authorizing specific acts of management harmful to the company, the shareholders, or third parties. Consequently, this statutory rule requires full and deliberate awareness of the performance of the harmful managerial act, qualifying as willful misconduct (intent), while excluding any imputation of liability grounded in mere negligence or failure to exercise oversight.

01. FACTUAL BACKGROUND AND ORDER NO. 1358/2026: UNJUSTIFIED PROFESSIONAL FEES AND MISMANAGEMENT

Litigation arising out of the management of limited liability companies frequently brings before the Italian Supreme Court complex disputes involving the blurring of boundaries between ownership prerogatives and business administration, making the precise delineation of the **liability of non-managing shareholders** highly topical. The dispute culminating in the **Italian Supreme Court of Cassation, Civil Division, Order of 21 January 2026, no. 1358**[1], originated from targeted **legal proceedings** brought by the holder of a twenty per cent equity stake in a real estate company, who complained of multiple and repeated acts of mismanagement (*mala gestio*) carried out by the **sole director** — holding forty per cent of the corporate capital — in concert with another shareholder, likewise holding a substantial stake, to whom specific **accounting and tax consultancy engagements** had been entrusted.

In the proceedings on the merits, the **Court of Appeal of Bologna**, upholding almost entirely the ruling of the Court of First Instance, had established a detailed pattern of **misappropriative conduct** detrimental to the integrity of the company's assets. Specifically, the lower courts had classified as unlawful the disbursements made in favor of the director by way of **repayment of shareholder loans** lacking documentary support, the reimbursement of **personal expenses**

incurred via the corporate credit card, as well as direct payments of invoices issued by a sole proprietorship attributable to the director himself for **construction sites that were never commenced**. Alongside such overtly misappropriative conduct, the court-appointed accounting appraisal and judicial scrutiny focused on the payment of substantial **professional fees** in favor of the non-managing shareholder totaling EUR 94,986.61, purportedly accrued for consultancy services and accounting data processing.

The element of particular substantive interest lies in the circumstance that the aforementioned professional payments took place during a timeframe in which the company was in a state of substantial **operational dormancy**, ongoing since 2007. Under such economic and corporate conditions, the services billed in the fee notes were neither backed by any **prior contractual agreement** nor matched by any actual **economic benefit** for the entity, amounting — with respect to the portion exceeding the **threshold of EUR 75,000.00** — to pecuniary transfers devoid of **underlying legal justification** (*causa*). The Court of Appeal had therefore ordered the non-managing shareholder, jointly and severally with the formal director, to compensate damages up to the concurrent cap of EUR 78,186.61, deducting solely the amounts relating to **tax withholdings and social security contributions** duly remitted to the tax authorities.

Challenging that judgment, the convicted shareholder lodged an **appeal before the Supreme Court of Cassation** alleging, insofar as relevant to the statutory grounds of liability, insufficient reasoning regarding the **adequacy of his professional services** and misapplication of **Article 2476, paragraph 8, of the Italian Civil Code**, contending that he had never adopted or authorized any harmful corporate resolution or decision, having merely collected the consideration billed under invoices issued for intellectual services. The Supreme Court nevertheless rejected the defense's argument, reaffirming that **managerial interference** does not necessarily presuppose a formal resolution: where a shareholder demands and collects **unjustified professional fees**, knowingly cooperating in the depletion of corporate assets, he assumes the substantive role of **co-manager of the harmful act**, thereby answering in full for the financial harm inflicted upon the company.

02. THE STATUTORY RULE UNDER ARTICLE 2476 OF THE CIVIL CODE: COMPLICITY IN WRONGDOING AND JOINT LIABILITY

2.1 — Statutory Foundations and Typological Evolution of the S.r.l.

The systematic architecture shaped by the 2003 **Italian corporate law reform** profoundly remodeled the structure of the limited liability company (*società a responsabilità limitata*), emancipating it from the traditional archetype of a scaled-down joint-stock corporation so as to configure it as an **autonomous organizational model** receptive to pronounced **partnership-like features**. Within this renewed Civil Code framework, the extension of compensatory liability to a shareholder holding no formal managerial office finds its statutory basis in Article 2476, paragraph 8, of the Italian Civil Code, under which "shareholders who have intentionally decided or authorized the performance of acts harmful to the company, the shareholders, or third parties are likewise jointly and severally liable with the directors pursuant to the preceding paragraphs." The underlying rationale of this provision lies in the substantial expansion of the **administrative and inspection rights** vested in individual quota-holders, counterbalanced within the legal order by the assumption of personal patrimonial liability whenever a shareholder steps outside the role of a passive investor to directly shape **corporate management**.

From a comparative corporate law standpoint, the rules under examination mark a sharp discontinuity from the model of the **joint-stock company** (*società per azioni*) governed by Article 2392 of the Italian Civil Code, where a strict **structural separation** prevails between share ownership and managerial functions. Whereas in a joint-stock company a shareholder is not liable for acts of administration — compensatory remedies remaining confined to the executive board

for breach of the duty to act with the **professional diligence required** by the nature of the office —, in a limited liability company the legislature codified a specific statutory rule of **complicity in managerial wrongdoing**. Far from establishing a presumption of co-liability for acts of mismanagement (*mala gestio*) attributable to the administrative body, such extension requires active conduct consisting in **co-decision or express authorization**, thereby preserving intact the principle of **limited patrimonial risk** for any shareholder who refrains from undue interference.

2.2 — Nature of Joint Liability and Causal Link between Conduct and Harm

The doctrinal characterization of the liability enshrined in Article 2476, paragraph 8, of the Italian Civil Code fits within the general paradigm of **joint and several compensatory obligations** governed by Article 2055 of the Italian Civil Code, which provides that "if a harmful event is attributable to more than one person, all are jointly and severally obliged to compensate for the damage." Nevertheless, legal scholars and courts must carefully bear in mind that the bond of **passive joint and several liability** linking director and shareholder is not satisfied by the mere identity of the pecuniary performance owed (*eadem res debita*), but requires proof of a common constitutive ground underlying the claim for damages (***eadem causa obligandi***), identifiable in the proven concurrence of both parties in the **same harmful transaction**. As also highlighted in a recent systematic analysis of **directors' liability in S.r.l.s**, co-liability stems not from the mere ownership of an equity quota, but from actual **causal cooperation** in harming the entity's assets.

It follows that judicial scrutiny demands a rigorous reconstruction of the **causal link** connecting the shareholder's causal contribution to the **harmful outcome** brought about by the formal director. The quota-holder's interference must have exerted a decisive, or at least concurrent, causal efficacy in resolving upon or executing the detrimental corporate transaction, whereas generic moral endorsement or **purely omissive conduct** remains legally insufficient. In internal contribution claims among joint and several debtors, the apportionment criteria based on the **severity of the respective fault** and the magnitude of the resulting harmful consequences will therefore apply, safeguarding the **distributive and compensatory function** inherent in corporate liability actions.

03. LIABILITY OF NON-MANAGING SHAREHOLDERS: WILLFUL MISCONDUCT AS AN INDISPENSABLE REQUIREMENT AND INTERFERENCE

3.1 — Ascertaining Willful Misconduct and Managerial Interference

The interpretive cornerstone of the Civil Code provision rests upon the **modal adverb "intentionally"** (*intenzionalmente*), whose normative scope has been thoroughly examined in recent **Supreme Court case law**. As crystallized by the **Italian Supreme Court of Cassation, Civil Division, Order of 13 December 2025, no. 32545**[2], the legislature intended to strictly circumscribe the scope of **passive joint and several liability** solely to cases in which full awareness and **deliberate volition** of the harmful conduct on the part of the shareholder clearly emerge. The statutory wording requires proof of genuine **willful misconduct (intent)**: compensatory liability arises exclusively where the quota-holder lucidly envisaged his **interference in managerial choices** and nevertheless intended to bring about or authorize the performance of an act detrimental to corporate assets or to creditors.

From an evidentiary perspective, **establishing willful misconduct** does not require proof of **specific intent** or a premeditated purpose of inflicting harm upon the company (*animus nocendi*); rather, it suffices to prove **conscious and voluntary managerial interference** accompanied by full awareness of the **harmful or misappropriative nature** of the transaction. Even so, the Supreme Court has reaffirmed that this statutory liability rule cannot be satisfied by a **finding of mere negligence**, imprudence, or lack of skill: fault based on negligence, whatever its degree, remains

incapable of grounding an award of damages against a non-managing shareholder, thereby averting the risk that **equity ownership** might degenerate into a general personal guarantee covering the company's business failures.

3.2 — Managerial Interference and Demarcation from the De Facto Director

On a conceptual and systematic plane, a clear **dividing line** must be drawn between the conduct of a shareholder who concurs in an isolated harmful act and the figure of the ***de facto* director** (*amministratore di fatto*). Whereas the latter is defined by the **systematic, continuous, and generalized exercise** of powers inherent in **corporate governance** — substantively assuming executive functions and answering for the overall conduct of the enterprise toward the company, its shareholders, and third parties —, the non-managing shareholder contemplated by Article 2476, paragraph 8, of the Italian Civil Code is liable solely within the boundaries of the specific act of management he decided or authorized. Such interference operates as an **instantaneous or discrete wrongful act**, which does not turn the quota-holder into a general manager, but confines his **compensatory liability** to the quantum of harm directly attributable to the specific conduct approved.

This distinction carries decisive practical consequences with respect to the **imputation of damages**: interference may materialize through decisive influence exerted upon the formal director by means of **shareholders' agreements**, **binding directives**, or contractual arrangements entered into under a **conflict of interest**, provided that the act exceeds the ordinary institutional competences of shareholders and encroaches upon the domain proper to **managerial decision-making**. Where **structural and ongoing integration** into the executive operations of the enterprise is lacking, the shareholder does not become a *de facto* director and cannot be held liable for the **overall insolvency shortfall** or ordinary operating losses, his obligation remaining strictly bounded by the scope of the act concretely authorized.

3.3 — Scope Limits and Exclusion of Liability for Failure to Supervise

A fundamental clarification regarding the **outer boundaries of the rule** stems from the **Italian Supreme Court of Cassation, Civil Division, Order of 6 July 2023, no. 19191**[3], which draws a rigorous **distinction** vis-à-vis the legal position of **non-executive directors** and members of the **board of statutory auditors**. In that dispute, the **insolvency receiver** sought to hold the shareholders jointly and severally liable for having failed to initiate judicial winding-up and **judicial liquidation** proceedings pursuant to Article 2485 of the Italian Civil Code upon expiration of the company's duration term, thereby allowing the director to continue business operations in breach of **asset-preservation duties**. The Supreme Court firmly rejected the claimant's contention, reiterating that the statutory provision does not apply to **omissive conduct** or allegations of **failure to supervise** corporate management.

Unlike administrative and supervisory bodies — which are subject to an affirmative legal duty to act in order to **safeguard corporate capital** —, the **inspection and consultation powers** over corporate books granted to individual shareholders under Article 2476, paragraph 2, of the Italian Civil Code constitute **participatory oversight prerogatives** designed to protect their own investment, rather than a mandatory legal duty enforceable through patrimonial liability. Consequently, the statutory rule governing the **liability of non-managing shareholders** does not extend to instances of mere inertia, passive acquiescence, or informational indifference; any contrary interpretation would surreptitiously erase the functional separation between ownership and management, turning the quota-holder's far-reaching information rights into an untenable source of compensatory exposure grounded in **omissive negligence**.

04. ALLOCATION OF THE BURDEN OF PROOF, DELIMITATION OF ACTS, AND

DEFENSE STRATEGIES

4.1 — Allocation of the Burden of Proof and Pleading of Patrimonial Harm

From the standpoint of **civil procedure** and **evidentiary rules**, a liability action brought against a non-managing shareholder is governed by the **general rule on the allocation of constitutive facts** enshrined in Article 2697 of the Italian Civil Code. The party bringing the action — whether an individual shareholder suing derivatively, the solvent company (*in bonis*), or the insolvency receiver — bears the burden of specifically pleading and proving all **constitutive elements of the compensatory claim**: the performance of a **harmful managerial act** by the formal directors, the shareholder's actual **concurrent contribution** by way of decision or authorization, the existence of **willful misconduct (intent)**, and an immediate and direct **causal link** connecting that conduct to the damage alleged.

With regard to the **particularization of the claim for damages**, Supreme Court case law has appropriately clarified that the **burden of pleading** does not require an immediate and exact **mathematical quantification of the loss** already in the **originating pleading**. The claimant discharges his procedural burden by thoroughly describing the unlawful conduct and the specific **patrimonial injury** inflicted upon the entity (such as the misappropriation of bank funds or the disbursement of undue professional fees), thereby enabling the defendants to exercise their right of defense in full on the issue of causation; the subsequent and definitive assessment of the recoverable *quantum* may properly take place on the basis of the findings of a **court-appointed accounting expert appraisal** ordered during the proceedings.

> Extending liability to a non-managing shareholder demands rigorous proof of willful interference in the specific harmful act, preventing shareholder information rights from being turned into a presumption of co-liability for corporate distress.

4.2 — Defense Strategies in Corporate Litigation and Delimitation of Acts

Effective **defense strategies** conducted on behalf of a **defendant shareholder** must pivot on a sharp dissociation between the plane of **general policy assessments** and that of concrete **managerial execution**. In litigation, counsel for the quota-holder must firmly plead the absence of any binding **mandate or unlawful inducement** vis-à-vis the administrative body, demonstrating that any **shareholders' agreements** or **general policy resolutions** neither constituted a binding authorization nor compelled the director to carry out **unlawful acts** (*contra legem*). Indeed, the director retains an non-derogable duty to independently assess the **economic soundness and legality of every transaction** prior to executing it with corporate funds.

A second **defensive safeguard** of paramount importance concerns the rigorous plea of **lack of the requisite mental element**. Where the challenged transaction falls within the ordinary performance of **professional services** or contractual contributions rendered in favor of the entity, counsel for the shareholder should substantiate the existence of a **prima facie valid contractual basis**, the **reasonableness of the fees charged**, and the actual performance of the intellectual work undertaken, thereby dismantling any presumption of **willful complicity in mismanagement**. In any event, defense counsel must resist any attempt to shift the entire **insolvency shortfall** onto the shareholder, strictly confining recoverable damages solely to the loss directly stemming from the specific act authorized.

Legal Parameter	Non-Managing Shareholder (Art. 2476, para. 8)	Formal Director (Art. 2476, para. 1)
Mental Element	Willful misconduct / intent (conscious awareness and volition of the harmful act)	Negligence and willful misconduct (statutory standard of professional diligence)
Scope of Conduct	Specific acts of management expressly decided or authorized	Overall management of the entity and preservation of corporate assets
Duty to Supervise	Excluded (mere discretionary prerogative of participatory inspection)	Mandatory and enforceable in case of failure to act
Claimant's Burden of Proof	Proof of actual managerial interference and willful intent	Pleading of breach of duty and proof of causal link

References & Authorities Cited

Statutory Provisions

- Article 2476 of the Italian Civil Code — Liability of directors and shareholder inspection rights in limited liability companies
- Article 2392 of the Italian Civil Code — Directors' liability toward the company in joint-stock corporations
- Article 2055 of the Italian Civil Code — Joint and several liability among joint tortfeasors causing a harmful event

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Order of 21 January 2026, no. 1358** — Upholds the joint and several liability award against a non-managing shareholder for collecting professional fees lacking legal justification during the company's operational dormancy and rules out any requirement for an exact mathematical quantification of damages in the originating pleading. Outcome: appeals dismissed. Para.: grounds of appeal on Art. 2476(8) Civil Code.

2. **Italian Supreme Court of Cassation, Civil Division, Order of 13 December 2025, no. 32545** — Confines the compensatory liability of a non-managing shareholder strictly to conscious awareness and deliberate volition of the harmful managerial act, qualifying the subjective requirement as willful misconduct (intent) and excluding mere negligence. Outcome: appeal declared inadmissible. Para.: examination of the intentionality requirement under Art. 2476(8) Civil Code.

3. **Italian Supreme Court of Cassation, Civil Division, Order of 6 July 2023, no. 19191** — Excludes any general liability on the part of non-managing shareholders for failure to supervise corporate management or for failing to timely initiate judicial winding-up proceedings upon expiration of the company's duration term. Outcome: main appeal and cross-appeal dismissed. Para.: scope of Art. 2476(8) Civil Code vis-à-vis omissive conduct.

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